

111TH CONGRESS
1ST SESSION

H. R. 1782

To amend the Truth in Lending Act to protect consumers from certain practices in connection with the origination of consumer credit transactions secured by the consumer's principal dwelling, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2009

Mr. ELLISON introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Truth in Lending Act to protect consumers from certain practices in connection with the origination of consumer credit transactions secured by the consumer's principal dwelling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for Home-
5 owners Act of 2009”.

1 **SEC. 2. ORIGINATIONS OF CONSUMER CREDIT TRANS-**
 2 **ACTIONS SECURED BY THE CONSUMER'S**
 3 **PRINCIPAL DWELLING.**

4 (a) IN GENERAL.—The Truth in Lending Act (15
 5 U.S.C. 1601 et seq.) is amended by inserting after section
 6 129A the following new section:

7 **“SEC. 129B. ORIGINATIONS OF CONSUMER CREDIT TRANS-**
 8 **ACTIONS SECURED BY THE CONSUMER'S**
 9 **PRINCIPAL DWELLING.**

10 “(a) DEFINITIONS.—For purposes of this section, the
 11 following definitions shall apply:

12 “(1) FULLY INDEXED RATE.—The term ‘fully
 13 indexed rate’ means the index rate prevailing at the
 14 time a consumer credit transaction secured by a con-
 15 sumer’s principal dwelling is originated, plus the
 16 margin that will apply after the expiration of an in-
 17 troductory interest rate.

18 “(2) MORTGAGE BROKER.—The term ‘mortgage
 19 broker’ means any person who is defined as a mort-
 20 gage broker under applicable State law.

21 “(b) REQUIREMENTS FOR ORIGINATORS.—

22 “(1) ABILITY TO PAY.—

23 “(A) IN GENERAL.—No creditor or mort-
 24 gage broker may make, provide, or arrange for
 25 any consumer credit transaction secured by a
 26 consumer’s principal dwelling without verifying

1 the consumer's reasonable ability to pay the
2 scheduled payments of the following, as applica-
3 ble:

4 “(i) Principal.

5 “(ii) Interest.

6 “(iii) Real estate taxes.

7 “(iv) Homeowner's insurance, assess-
8 ments, and mortgage insurance premiums.

9 “(B) VARIABLE INTEREST RATE.—In the
10 case of any consumer credit transaction secured
11 by a consumer's principal dwelling for which
12 the applicable annual percentage rate may vary
13 over the life of the credit, the reasonable ability
14 to pay shall be determined, for purposes of this
15 paragraph, on the basis of a fully indexed rate
16 plus 200 basis points and a repayment schedule
17 which achieves full amortization over the life of
18 the extension of credit.

19 “(C) VERIFICATION OF CONSUMER INCOME
20 AND FINANCIAL RESOURCES.—

21 “(i) IN GENERAL.—In the case of any
22 consumer credit transaction secured by a
23 consumer's principal dwelling, the income
24 and financial resources of the consumer
25 shall be verified for purposes of this para-

graph by tax returns, payroll receipts,
bank records, or other similarly reliable
documents.

“(ii) CONSUMER STATEMENT INSUFFICIENT.—A statement by a consumer of the consumer’s income or financial resources shall not be sufficient to establish the existence of any income or financial resources when verifying the reasonable ability of the consumer to repay any consumer credit transaction secured by the consumer’s principal dwelling, for purposes of this paragraph.

“(D) OTHER CRITERIA.—Creditors or mortgage brokers may rely on additional criteria other than a consumer’s income and financial resources to establish the reasonable ability of the consumer to repay any consumer credit transaction secured by the consumer’s principal dwelling, to the extent such other criteria are also verified through reasonably reliable methods and documentation.

“(E) EQUITY IN DWELLING NOT TO BE TAKEN INTO ACCOUNT.—The consumer’s equity in the principal dwelling that secures or would

1 secure the consumer credit transaction may not
2 be used to establish the ability to make the pay-
3 ments described in subparagraph (A) with re-
4 spect to such transaction.

5 “(2) PROHIBITION ON STEERING.—

6 “(A) IN GENERAL.—In connection with a
7 home mortgage loan, a mortgage broker or
8 creditor may not—

9 “(i) steer, counsel, or direct a con-
10 sumer to rates, charges, principal amount,
11 or prepayment terms that are more expen-
12 sive for that which the consumer qualifies;
13 or

14 “(ii) make, provide, or arrange for
15 any consumer credit transaction secured by
16 a consumer’s principal dwelling that is
17 more expensive than that for which the
18 consumer qualifies.

19 “(B) DUTIES TO CONSUMERS.—If unable
20 to suggest, offer, or recommend to a consumer
21 a home loan that is not more expensive than
22 that for which the consumer qualifies, a mort-
23 gage originator shall—

24 “(i) based on the information reason-
25 ably available and using the skill, care, and

1 diligence reasonably expected for a mort-
2 gage originator, originate or otherwise fa-
3 cilitate a suitable home mortgage loan by
4 another creditor to a consumer, if per-
5 mitted by and in accordance with all other-
6 wise applicable law; or

7 “(ii) disclose to a consumer—

8 “(I) that the creditor does not
9 offer a home mortgage loan that is
10 not more expensive than a loan for
11 which the consumer qualifies, but that
12 other creditors may offer such a loan;
13 and

14 “(II) the reasons that the prod-
15 ucts and services offered by the mort-
16 gage originator are not available to or
17 reasonably advantageous for the con-
18 sumer.

19 “(C) PROHIBITED CONDUCT.—In connec-
20 tion with a home mortgage loan, a mortgage
21 originator may not—

22 “(i) mischaracterize the credit history
23 of a consumer or the home loans available
24 to a consumer;

1 “(ii) mischaracterize or suborn the
2 mischaracterization of the appraised value
3 of the property securing the extension of
4 credit; and

5 “(iii) if unable to suggest, offer, or
6 recommend to a consumer a loan that is
7 not more expensive than a loan for which
8 the consumer qualifies, discourage a con-
9 sumer from seeking a home mortgage loan
10 from another creditor or with another
11 mortgage originator.

12 “(3) PROHIBITION ON PREPAYMENT PEN-
13 ALTIES.—In the case of any consumer credit trans-
14 action secured by a consumer’s principal dwelling,
15 the transaction may not contain terms under which
16 a consumer is required to pay a prepayment penalty
17 for paying all or part of the principal before the date
18 on which the principal is due.

19 “(c) LIMITATION ON FINANCED POINTS, CHARGES,
20 AND FEES.—

21 “(1) IN GENERAL.—No creditor or mortgage
22 broker may, in connection with any consumer credit
23 transaction secured by the consumer’s principal
24 dwelling, include in the principal amount of such
25 transaction any portion of any qualified finance

1 charge in excess of the amount which is equal to 5
2 percent of the principal amount of the transaction.

3 “(2) DEFINITIONS.—For purposes of this sub-
4 section, the following definitions shall apply:

5 “(A) QUALIFIED FINANCE CHARGE.—The
6 term ‘qualified finance charge’ means the sum
7 of—

8 “(i) the finance charge as determined
9 under section 103(aa)(4); and

10 “(ii) all compensation paid to a mort-
11 gage broker from any source in connection
12 with this transaction.

13 “(B) PRINCIPAL AMOUNT.—The term
14 ‘principal amount’ means—

15 “(i) in the case of any consumer cred-
16 it transaction under an open end credit
17 plan secured by the consumer’s principal
18 dwelling, the maximum amount of credit
19 that may be extended under the terms of
20 such plan as determined without taking
21 into account any amount included in deter-
22 mining the finance charge under section
23 106; and

24 “(ii) in the case of any other con-
25 sumer credit transaction secured by a con-

1 sumer’s principal dwelling, the face
2 amount of the obligation on the note.

3 “(3) PROHIBITION ON EXCESSIVE FINANCE
4 CHARGES.—

5 “(A) LIMITATION BASED ON AMOUNT OF
6 TRANSACTION.—No person may, in connection
7 with any consumer credit transaction secured
8 by the consumer’s principal dwelling, impose or
9 receive any amount included in determining the
10 qualified finance charge for such transaction
11 that exceeds the amount which is equal to 5
12 percent of the principal amount of the trans-
13 action;

14 “(B) LIMITATION ON FEE FOR PROVIDING
15 LESS BENEFICIAL TERMS FOR CONSUMER.—Ex-
16 cept as provided in subparagraph (c), no person
17 may provide and no mortgage originator may
18 receive, directly or indirectly, any compensation
19 for originating a consumer credit transaction
20 secured by a consumer’s principal dwelling that
21 is more costly than that for which the consumer
22 qualifies, or that is based on, or varies with, the
23 terms of any home mortgage loan (other than
24 the amount of loan principal.);

1 “(C) EXCEPTION.—Notwithstanding sub-
2 paragraph (B), a mortgage broker may receive
3 compensation in the form of an increased rate,
4 but only if—

5 “(i) the mortgage broker receives no
6 other compensation, however denominated,
7 directly or indirectly, from the consumer,
8 creditor, or other mortgage originator;

9 “(ii) the loan does not include dis-
10 count points, origination points, or rate re-
11 duction points, however denominated, or
12 any payment reduction fee, however de-
13 nominated;

14 “(iii) the loan does not include a pre-
15 payment penalty; and

16 “(iv) there are no other closing costs
17 associated with the loan, except for fees to
18 government officials or amounts to fund
19 escrow accounts for taxes and insurance.

20 “(d) MORTGAGE BROKER DUTIES.—

21 “(1) IN GENERAL.—Any mortgage broker act-
22 ing to obtain or arrange for any consumer credit
23 transaction secured by the consumer’s principal
24 dwelling shall owe a duty to the borrower to comply
25 with the following duties:

1 “(A) Mortgage brokers shall act in the
2 consumer’s best interest and in the utmost good
3 faith toward each consumer and shall not com-
4 promise a consumer’s right or interest in favor
5 of another’s right or interest, including a right
6 or interest of the mortgage broker.

7 “(B) A mortgage broker shall not accept,
8 give, or charge any undisclosed compensation or
9 realize any undisclosed remuneration, either
10 through direct or indirect means, that inures to
11 the benefit of the mortgage broker on an ex-
12 penditure made for the consumer.

13 “(C) Mortgage brokers shall carry out all
14 lawful instructions given by the consumer.

15 “(D) Mortgage brokers shall disclose to
16 consumers all material facts of which the mort-
17 gage broker has knowledge which might reason-
18 ably affect the consumer’s rights, interests, or
19 ability to receive the consumer’s intended ben-
20 efit from the consumer credit transaction, but
21 not facts which are reasonably susceptible to
22 the knowledge of the consumer.

23 “(E) Mortgage brokers shall use reason-
24 able care in performing duties.

1 “(F) Mortgage brokers shall account to a
2 consumer for all the consumer’s money and
3 property received as agent.

4 “(2) SCOPE.—The duties of the mortgage
5 broker to the consumer apply when the mortgage
6 broker is acting in the capacity of mortgage broker
7 providing mortgage brokerage services with respect
8 to any consumer credit transaction secured by the
9 consumer’s principal dwelling for which the broker is
10 not the creditor.

11 “(3) RULES OF CONSTRUCTION.—

12 “(A) FEES FOR SERVICES RENDERED.—
13 No provision of this subsection shall be con-
14 strued as prohibiting a mortgage broker from
15 contracting for or collecting a fee for services
16 actually rendered to the extent the fee has been
17 disclosed to the consumer in advance of the pro-
18 vision of such services and complies with sub-
19 section (c)(3).

20 “(B) DUTY OF BROKER.—Except as re-
21 quired by subsection (b)(2), no provision of this
22 subsection shall be construed as requiring a
23 mortgage broker—

24 “(i) to obtain or arrange for any con-
25 sumer credit transaction secured by the

1 consumer's principal dwelling on behalf of
2 a consumer that contains terms or condi-
3 tions not available to the mortgage broker
4 in the mortgage broker's usual course of
5 business; or

6 “(ii) to obtain or arrange for any con-
7 sumer credit transaction secured by the
8 consumer's principal dwelling from a cred-
9 itor with whom the mortgage broker does
10 not have a business relationship.

11 “(e) INDEPENDENT VERIFICATION OF CONSUMER
12 COUNSELING BEFORE REFINANCING SPECIAL MORT-
13 GAGES.—

14 “(1) IN GENERAL.—No creditor or mortgage
15 broker may make, provide, or arrange for any con-
16 sumer credit transaction secured by the consumer's
17 principal dwelling all or a portion of the proceeds of
18 which are used to fully or partially pay off a special
19 mortgage unless the borrower has obtained a written
20 certification from an authorized independent loan
21 counselor that the borrower has received counseling
22 on the advisability of the transaction.

23 “(2) DEFINITIONS.—For purposes of this sec-
24 tion, the following definitions shall apply:

1 “(A) SPECIAL MORTGAGE.—The term ‘spe-
2 cial mortgage’ means any consumer credit
3 transaction secured by the consumer’s principal
4 dwelling that was originated, subsidized, fund-
5 ed, or guaranteed by or through a State, tribal,
6 or local government, or nonprofit organization,
7 that bears 1 or more of the following non-
8 standard payment terms which substantially
9 benefit the consumer:

10 “(i) Payments vary with income.

11 “(ii) Payments of principal or interest
12 are not required or can be deferred under
13 specified conditions.

14 “(iii) Principal or interest is forgiv-
15 able under specified conditions.

16 “(iv) Either no interest or an annual
17 interest rate of 2 percent or less is charged
18 in connection with the loan.

19 “(B) AUTHORIZED LOAN COUNSELOR.—
20 The term ‘authorized independent loan coun-
21 selor’ means any nonprofit, third-party indi-
22 vidual or organization providing homebuyer
23 education programs, foreclosure prevention
24 services, mortgage loan counseling, or credit
25 counseling that is certified by the Secretary of

1 Housing and Urban Development, or certified
2 by any State housing agency or nonprofit orga-
3 nization designated by such Secretary, for such
4 purposes.

5 “(f) MINIMUM FINANCIAL REQUIREMENTS FOR
6 MORTGAGE BROKERS.—No mortgage broker may obtain
7 or arrange for any consumer credit transaction secured
8 by the consumer’s principal dwelling unless at all times
9 the mortgage broker—

10 “(1) maintains a minimum net worth, net of in-
11 tangibles, of at least \$500,000, as determined in ac-
12 cordance with generally accepted accounting prin-
13 ciples; or

14 “(2) maintains a surety bond or irrevocable let-
15 ter of credit in the amount of \$50,000.

16 “(g) ENFORCEMENT.—For purposes of providing a
17 cause of action for any failure by a mortgage broker to
18 comply with any requirement imposed under this section,
19 section 130(a) shall be applied with respect to any such
20 failure—

21 “(1) by substituting ‘mortgage broker’ for
22 ‘creditor’ each place such term appears in such sec-
23 tion; and

24 “(2) by treating all qualified finance charges
25 (as defined in subsection (c)(2)(A)) incurred in the

1 origination of any consumer credit transaction se-
 2 cured by the consumer's principal dwelling and any
 3 compensation paid or payable in violation of (c)(3)
 4 as actual damages sustained by the consumer as a
 5 result of the failure.

6 “(h) EXCLUSION OF REVERSE MORTGAGES.—This
 7 section shall not apply with respect to any consumer mort-
 8 gage transaction that constitutes a reverse mortgage.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
 10 The Truth in Lending Act is amended—

11 (1) in section 103(u) (15 U.S.C. 1602(u)), by
 12 striking “and the disclosures required by section
 13 129(a)” and inserting “and the provisions of sec-
 14 tions 129 and 129B”;

15 (2) in section 130 (15 U.S.C. 1640), by insert-
 16 ing “or 129B” after “section 129” each place such
 17 term appears;

18 (3) in the heading for subsection (d) of section
 19 131 (15 U.S.C. 1641), strike “CERTAIN” and insert
 20 “HIGH-COST”;

21 (4) in section 131(c) (15 U.S.C. 1641)—

22 (A) by striking “(c) Any consumer” and
 23 inserting “(c) RESCISSION RIGHTS.—

24 “(1) IN GENERAL.—Any consumer”; and

1 (B) by inserting after paragraph (1) (as so
2 designated by subparagraph (A) of this para-
3 graph) the following new paragraph:

4 “(2) CIVIL DAMAGES.—In a consumer credit
5 transaction secured by a principal dwelling, other
6 than a mortgage referred to in section 103(aa), an
7 assignee or holder shall be liable for violations of
8 this chapter or, of section 129B in a civil action for
9 monetary damages under section 130(a), notwith-
10 standing paragraph (1), except that any relief made
11 permissible by this subparagraph may not exceed the
12 sum of the amount of any remaining indebtedness
13 and the total amount paid by the consumer in con-
14 nection with the transaction.”; and

15 (5) in section 131 (15 U.S.C. 1641) by adding
16 at the end the following new subsection:

17 “(g) REMEDY IN LIEU OF RESCISSION FOR CERTAIN
18 VIOLATIONS.—At the election of a consumer entitled to
19 rescission for violations of section 129B, any person, in-
20 cluding a creditor, who holds, purchases, or is otherwise
21 assigned a mortgage or similar security interest in connec-
22 tion with a mortgage on a principal dwelling—

23 “(1) may be required to make such adjustments
24 to the balance of the obligation as are required
25 under section 125, and to reflect any other relief

1 pursuant to section 130 and any other legal claims;
2 and

3 “(2) shall modify or refinance the loan, at no
4 cost to the consumer, the resulting balance of which
5 shall provide terms that would have satisfied the re-
6 quirements of section 129B at the origination of the
7 loan and to pay costs and reasonable attorneys
8 fees.”.

9 (c) CLERICAL AMENDMENT.—The table of sections
10 for chapter 2 of the Truth in Lending Act is amended
11 by inserting after the item relating to section 129 the fol-
12 lowing new item:

 “129B. Originations of consumer credit transactions secured by the consumer’s
 principal dwelling.”.

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